IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-09-2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NOs.23862 & 23863 OF 2004

S. Velayudham
S/o. G. Sekar
AP Plot No.17/1332,
19th East Cross Street,
M.K.B. Nagar, Chennai 39. .. Petitioner in WP.23862/04

U. Vijayalakshmi
Minor aged about 17 years
Minor rep. by her father and
natural guardian E. Ulaganathan
Old No.17/1, New No.32,
Vasantha Garden 1st Street,
Ayanavaram, Chennai 600 023. .. Petitioner in WP.23863/04

Vs.

The Convenor,
Government of Pondicherry,
Centralised Admission Committee (CENTAC),
Pondicherry Engineering College,
Pillaichavady,
Pondicherry 605 014. .. Respondent in both WPs.

Petitions are filed under Article 226 of the Constitution of India for the issuance of writ of Mandamus by directing the respondent to consider the petitioner as Pondicherry resident and permit the petitioner to attend the counselling for provisional admission for free Government quota M.B.B.S seats for the academic year 2004-05 in the private medical colleges.

For Petitioners : Mr.K.S. Ganesh Babu

For Respondent : Mr.T. Murugesan,
Govt. Pleader (Pondicherry)

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J U D G M E N T

Both these writ petitions are based on similar facts and circumstances and raise a common question of law. Therefore, both the writ petitions were heard together and shall be governed by this common judgment.

2. The writ petitions have been filed by the children of two employees of Oil and Natural Gas Corporation Limited, in short ONGC, seeking admission to MBBS course against Government quota. The question relates to admission for the academic year 2004-05. The main issue relates to eligibility of the candidates on the basis of paragraph 2.6 of the Information Bulletin issued by CENTAC. The relevant portion of paragraph 2.6 is extracted hereunder :-

> "2.6 Pondicherry UT Candidates
>
> Candidates who are residents of Pondicherry UT are eligible for admission to all the degree courses. A candidate is considered to be of Pondicherry Resident (Pondicherry UT Candidate) provided he / she is an Indian national and satisfies at least one of the following criteria.
>
> ...
>
> 3. Children of Central / State Government Servants / Defence Personnel / Central Paramilitary Forces / Employees of Public Sector Undertakings wholly or substantially run either by the Central Government or by the Pondicherry UT administration posted and serving in the Pondicherry UT for at least a minimum period of one year prior to the last date of submission of application."

3. The case of the petitioners is that they being the children of employees of Public Sector Undertaking, fully or substantially run by the Central Government (in ONGC), were serving under ONGC at Karaikal within the Pondicherry Union Territory, for a minimum period of one year prior to the submission of the application, should have been considered eligible as per sub-paragraph (3) of paragraph 2.6 of the Information Bulletin issued by CENTAC.

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4. In the counter affidavit filed in W.P.No.23862 of 2004, it has been indicated that the petitioner in the said writ petition was not considered as Pondicherry resident as the Residence Certificate produced by the candidate was not in the manner prescribed in the CENTAC Bulletin. It is further indicated that the candidate has not obtained the Residence Certificate from the Head Office (GGM-Asset Manager) and the Certificate issued by the Senior P & A Officer was not considered sufficient. It is further

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indicated that in case the candidate produce the required service certificate as prescribed by CENTAC during the second phase of counselling, the candidate would be offered seat as per the merit rank. It is further stated that the matter was taken to the notice of the GGM-Asset Manager, ONGC, Karaikal by CENTAC and such General Manager has sent a letter indicating that ONGC operations are spread in many locations, even outside the Pondicherry UT area, and at present 1125 employees were working at the Karaikal Asset, Base office at Neravy, Karaikal. In the counter it is also indicated that out of such employees working in ONGC, only 350 are posted and working in the base office at Neravy, Karaikal and others were working at the Rigs and product Installations in Tamil Nadu on 14 days on/off duty. They are not physically working at Karaikal and they never come to Karaikal even after completion of work and straight away go to their home town or wherever their family members are living. The employees who are working in the Rigs/Production Installations get two different Certificates, one as if they are working in Karaikal and another as if they are working in Tamil Nadu.

5. The format of Certificate required to be given has been indicated. Form-D relates to Residence Certificate. Various alternative forms are indicated therein. So far as the certificate required for the petitioners is concerned, it has been indicated in paragraph 3 of such Form, which is to the following effect :-

> "3. Certified that Shri./Smt. ..... father/mother of Shri./Smt./Kumari. ..... is an employee of Central/State Government / Defence Personal / Central Paramilitary Forces/ .....(a public sector undertaking wholly or substantially run by the Central Government / UT Administration) and that he/she is presently posted and serving in Pondicherry UT) since ..... (Please indicate the date from which he/she has been serving in Pondicherry UT)."

6. So far as the petitioner in W.P.No.23863 of 2004 is concerned, the Certificate was issued by the GGM-Asset Manager, which indicated that the father of the petitioner "... is presently posted and working in Karaikal Asset, Karaikal in Pondicherry U.T., since 06.10.1994 continuously without break, on 14 days ON/OFF duty pattern." So far as the petitioner in W.P.No.23862 of 2004 is concerned, the Certificate dated 28.5.2004 was initially issued by the Senior P & A Officer in the prescribed format on behalf of ONGC wherein it was indicated that the father of the petitioner is an employee of ONGC, Karaikal Asset, Karaikal and he is presently posted and serving in Pondicherry UT since 5.3.1986. Subsequently, on 5.8.2004, a similar certificate was issued by GGM-Asset Manager. So far as W.P.No.23863 is concerned, there is no dispute that the certificate was issued in the proper format by the proper officer.

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It is thus obvious that both the certificates were valid being in the prescribed format.

7. Learned counsel appearing for each of the petitioner has contended that since Residence Certificate in the prescribed format has been given, the respondent should not have refused admission merely on the basis that the father of the petitioner was not physically working within the territory of Pondicherry. It has been further contended that the nature of work of the petitioner's father is such, which requires him to work in the Rig for 14 days on/off pattern and merely because the Rig was Off-shore, the petitioner's case should not have been ignored. The petitioners have placed reliance upon the decision of the Supreme Court reported in 2004(4) CTC 796 (DOLLY CHHANDA v. CHAIRMAN, JEE AND OTHERS) in support of their contention that even though the year was over, they should be admitted this year as they were not at fault and the non-selection last year was on account of the illegality committed by the respondents.

8. Learned Government Pleader (Pondicherry) appearing for the respondent has contended that even though the office was at Karaikal, the concerned persons were not working within Pondicherry, but were working in the Rigs(obviously Off-shore), and they were not staying within Pondicherry but staying in Chennai and because of such factor, the two students in question were not admitted. It has been further contended that the academic year during which the petitioners sought for admission being over, no direction for their admission can be given during the subsequent year on the basis of the earlier entrance examination. In support of his latter contention, the Government Pleader has placed reliance upon the decision of the Supreme Court reported in (2000) 9 SCC 115 (RAJIV KAPOOR AND OTHERS v. STATE OF HARYANA AND OTHERS).

9. An analysis of clause 3 of paragraph 2.6 makes it clear that the Central Government servant or the State Government servant or the Defence Personal or the Central Paramilitary Forces or the employee of the public sector undertaking wholly or substantially run by the Central Government or by the Pondicherry Union Territory, whose child is seeking admission, should be "posted and serving in Pondicherry Union Territory at least for a minimum period of one year."

10. The contention of the respondents seems to be to the effect that even though such persons are employed under ONGC, whose Office is in Karaikal within the Pondicherry Union Territory, such employees were not physically posted and serving in Pondicherry inasmuch as they were discharging their duty for 14 days on and off pattern on the Off-shore Rigs which were installed in the Highseas

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and at any rate such employees were also not physically residing within the jurisdiction of the Pondicherry and they were residing within Tamil Nadu.

11. Since the Office is at Karaikal, the Off-shore Rigs, which were established in the Highseas, in normal course should be notionally considered as coming within the jurisdiction of Karaikal and in that sense it can be said that such persons were posted and serving in the Pondicherry Union Territory. It is of course true that during the 14 days off period such persons had actual residence within Tamil Nadu, but such residence within Tamil Nadu is a matter of mutual convenience between the employer and the employee and cannot be a ground to deny eligibility, which is on the basis that the concerned employee was "posted and serving" in Pondicherry. The place of actual residence is not a relevant consideration for considering the eligibility in the light of Clause (3) of paragraph 2.6 of the Information Bulletin. Any other interpretation is likely to result in an artificial barrier for the purpose of entitlement of such children, whose parents are legally employed under ONGC within Karaikakl, but physically working in the Highseas.

12. In the present case, both the petitioners had furnished certificates issued by the Head of the Department and even assuming that initially one such certificate was issued by the Senior P & A Officer, on such technical consideration, the certificates need not have rejected, particularly, when subsequently proper certificate had been obtained. It is not disputed that two students in question would have otherwise got selected if their application would not have been ignored on a hyper-technical view.

13. The next question is as to whether a direction should be issued for admission of the petitioners against Government quota on the basis of the marks obtained during 2003-04 common entrance test.

14. For the current academic session, as per the judicial order passed by the High Court, the Government quota is fixed at 50%. Two seats are directed to be kept vacant by the interim order passed by this Court so far as the present writ petitions are concerned.

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15. Learned counsel for the petitioners has submitted that since the petitioners were not at fault and the petitioners could not get admission during 2004-05 on account of the mistake committed by the CENTAC, in the interest of justice, the petitioners should be directed to be admitted during the present session on the basis of the marks which they had obtained in the common entrance test held for the year 2004-05. In support of such submission, the learned counsel for the petitioners has placed reliance upon several

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decisions of the Supreme Court.

16. In Civil Appeal No.4051 of 2004 disposed of on 12.7.2004, the question raised was almost similar. In the said case, the Madras High Court while upholding the contention of the candidate that he was more meritorious than the other candidate selected, directed admission of the candidate during the same academic session and further directed the State Government to seek for permission to create additional seat. Such direction was challenged by the Medical Council of India in the Supreme Court. The Supreme Court while upholding the contention of the Medical Council of India that no such direction for creation of additional seat should be issued, observed :

> "However, the Respondent No.1 writ petitioner has been pursuing his studies pursuant to the impugned order atleast from the beginning of this year. In that view of the matter, we are of the view that the respondent writ petitioner should be granted admission for the academic year 2004-05 without any further counselling within the permissible intake limit."

In other words, the petitioner in the said case was allowed to get admission during the next year.

17. Learned counsel for the petitioners further relied upon the decision of the Supreme Court in Civil Appeal Nos.2423 to 2425 of 2005 disposed of on 4.4.2005. The appeal was filed by the Dental Council of India against the direction of the High Court In the said case, one candidate Dr. Deepa was ranked higher than that Dr. Pravina, but Dr. Pravina had been admitted. The High Court found that neither Dr. Pravina nor Dr. Deepa were at fault and directed creation of supernumerary seat for accommodating Dr. Deepa in the course for the Academic Year 2004-2005. The Supreme Court while allowing the Civil Appeals filed by the Dental Council of India and the Selection Committee and observing that direction for creation of additional seat should not have been issued, held as follows :-

> "The question still remains about accommodating Dr.Deepa in the course, above-referred. Having regard to the peculiar facts of the case, we direct that in the Academic Year 2005-2006, Dr. Deepa shall be accommodated in M.D.S. (Orthodontics) in Ragas Dental College. We may note that by order dated 14th March, 2005, it was directed that one seat in M.D.S. (Orthodontics) shall not be filled for the Academic Year 2005-2006. The admission granted to Dr.Deepa in the aforesaid college would be out of the Government quota. The learned counsel appearing for the College has no objection in this regard. We are also of

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the view that,having regard to the peculiar facts of the case, it is the only proper course in order to do substantial justice between the parties without it being treated as a precedent."

18. It is of course true as pointed out by the learned counsel for the respondents that the aforesaid order was passed on its own peculiar facts and the Supreme Court itself observed that such order should not be treated as a precedent. However, the facts were almost similar.

19. In 2004(4) CTC 796 (DOLLY CHHANDA v. CHAIRMAN, JEE & OTHERS), a Bench consisting of three Honourable Judges was considering the question of admission to MBBS Course almost under similar circumstances. In the said case, in respect of special category reserved for children or widow of personnel of armed or paramilitary forces killed or disabled in action, the petitioner was not selected as the certificate produced by the petitioner was found to be not in order by the Committee. The Orissa High Court had upheld the action of the Selection Committee by judgment dated 31.10.2003. The Supreme Court found that non-selection of the petitioner was on a highly technical view, even though the petitioner was actually eligible. The Supreme Court thereafter observed :-

"9. The appellant undoubtedly belonged to reserved MI category. She comes from a very humble background, her father was only a Naik in the armed forces. She may not have noticed the mistake which had been committed by the Zilla Sainik Board while issuing the first certificate dated 29.6.2003. But it does not mean that the appellant should be denied her due when she produced a correct certificate at the stage of second counselling. Those who secured rank lower than the appellant have already been admitted. The view taken by the authorities in denying admission to the appellant is wholly unjust and illegal.

10. The appellant had qualified in the JEE-2003 but the said academic year is already over. But for this situation the fault lies with the respondents, who adopted a highly technical and rigid attitude and not with the appellant. We are, therefore, of the opinion that the appellant should be given admission in MBBS course in any of the State medical colleges in the current academic year.

11. The appeal is accordingly allowed with costs. the judgment and order dated 31.10.2003 of the High Court is set aside. The respondents are directed to give admission to the appellant in any one of the State medical colleges forthwith. In case the State seats have already been filed up, one extra seat shall be created for her."

(Emphasis added)

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20. As against the aforesaid decisions or orders of the Supreme Court, the learned counsel appearing for the respondent placed reliance upon the decisions of the Supreme Court reported in (2000) 9 SCC 115 (RAJIV KAPOOR AND OTHERS v. STATE OF HARYANA AND OTHERS), (2002) 7 SCC 258 (MEDICAL COUNCIL OF INDIA v. MADHU SINGH AND OTHERS) and (2005) 2 SCC 65 (MRIDUL DHAR (Minor) AND ANOTHER v. UNION OF INDIA AND OTHERS). So far as the later two decisions are concerned, it has been stated therein that no direction should be issued for admission during mid-course and the time schedule for admission should be strictly complied with and there should not be any increase of seats. The ratio in those decisions is not applicable as in the present case the question is as to whether the petitioners can be accommodated on the basis of the result of the earlier year.

21. In (2000) 9 SCC 115 (cited supra), the dispute was relating to admission to Postgraduate degree and diploma courses in Medicine from amongst the Haryana Civil Medical Service candidates for the academic session 1997. The petitioner before the High Court claimed that, as per the prospectus, selection for admission to be made only on the basis of the marks obtained by a candidate in the entrance examination. But the contesting respondents as well as the State Government contended that the marks obtained in the entrance examination only entitled them to be called for interview, being only a qualifying test and the final selection against the reserved seats was required to be made by the Selection Committee on the basis of the specified criteria stipulated by the Government from time to time, based on the academic career, experience, rural service, annual confidential reports and marks obtained at the interview. The High Court, however, accepted such contention of the petitioners and directed cancellation of the admission given to the contesting respondents on the basis that selection is to be made only on the basis of merit, as per the marks obtained in the written entrance examination. The contesting private respondents before the High Court filed appeal. The State of Haryana intimated that the order of the High Court had been implemented and the State do not intend to unsettle the position insofar as the already selected candidates were concerned but the question of law should be decided. The Supreme Court came to the conclusion that the High Court fell into error in sustaining the claim of the writ petitioners and observed that merits of such candidates were required to be adjudged in terms of the criteria contained in the Government Orders. However, even though the Supreme Court differed from the conclusion of the High Court, it refused to pass any order regarding admission of the successful appellants in any subsequent academic year and did not interfere with the admission of the writ petitioners (Respondents before the Supreme Court). It is profitable to quote the relevant observations made by the Supreme Court :-

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"16. The dispute relates to the academic session of the year 1997 and we are in 2000. To utilise the seats meant for the next academic year by accommodating those candidates of 1997 vintage would amount to deprivation of the legitimate rights of those who would be in the fray of contest for selection, on the basis of their inter se merit for the session of 2000, taking into account the performance of the candidates of 1997 in that year. The suggestion to create additional seats, apart from the objections from the State, cannot also be acceded to for the purpose of admitting only the appellants inasmuch as any additional seats even if allowed to be created during a particular year must be filled up only on the basis of the standard and merit performance of the candidates participating in the contest for the said year. That apart, some of the appellants appear to have got admitted into diploma courses, having not been selected for degree courses and there is no scope for adjusting the period of study put in by them while pursuing diploma course, as one spent for PG degree course. There is also a positive prohibition for a candidate pursuing PG diploma course in a particular discipline to claim to do PG degree course in a different discipline." (Emphasis added)

22. The aforesaid decision of the Supreme Court was followed by a Division Bench of this Court in W.A.No.1441 of 2005 dated 6.9.2005. In the said case, the question related to admission to Post Graduate course, namely, M.D.S. The last date for admission to the course was 31.5.2004. On that date itself, a successful candidate, who had been selected against All India Quota discontinued for admission and as such one vacancy arose. The learned single Judge in a writ petition filed in March, 2005, i.e., after about 10 months, directed that another candidate should be admitted during the academic session 2005 or academic session of 2006. The Division Bench reversed such decision by observing :-

"9. Assuming the said Archana, who was accommodated under All India quota discontinued her studies, the same cannot be allotted to the first respondent herein since any such vacancy if at all goes to the reserved category. The records placed before us disclose that the said Archana discontinued her studies by giving a letter on 31-05-2004 afternoon, but the first respondent herein has chosen to file the writ petition only on 22-03-2005 i.e., after lapse of one year. The decisions of the Honourable Apex Court extracted above show that admitting students in midstream, even if seats are unfilled not permissible, the telescoping of unfilled seats of one year with permitted seat of the subsequent year also prohibited and the utilisation of

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seats meant for the next academic year by accommodating candidates of previous academic year would amount to deprivation of legitimate right of those who would be in the fray of contest for selection, on the basis of their inter se merits for the next academic year. Admittedly, the said vacancy also not filled up by the appellants after 31-05-2004 in view of the decisions of the Honourable Apex Court as well as the guidelines issued by the Director General of Heath, New Delhi, hence the argument of the first respondent that she should have been accommodated in the vacancy which resulted in discontinuation of the said Archana is to be rejected." (Emphasis added)

23. The decision of the Supreme Court in Dolly Chhanda's case was distinguished by observing that in the said case, the writ petition had been filed immediately and candidates who had secured lower marks or lower rank were admitted.

24. The reluctance of the Courts to adjust a student in the subsequent year's admission in respect of Post Graduate Courses, which have less intake capacity and are much more "merit oriented" need not percolate down in the matters relating to admission to MBBS and the students who would be deprived this year as a consequence can have their chance in the coming years. The two unreported decisions of the Supreme Court and the decision in Dolly Chhanda's case reflect a less inflexible judicial policy at least in the matters relating to admission to MBBS, where the illegality is that of the Government or the Selection Committee.

25. The course adopted by the Supreme Court in Dolly Chhanda's case as well as two unreported orders appears to be very apt and proper to be applied in the peculiar facts and circumstances of the present cases. In this connection, it is also necessary to emphasise that the decision in Rajiv Kapoor's case is distinguishable in the sense that in the said case the fault was not of the State (Even though the fault was not of the candidate). Moreover, in the said case, the question related to admission in the Post Graduate course and some of the appellants had already taken admission to Diploma courses and there has been specific prohibition that those who have already admitted to Diploma courses could not take admission to said Post Graduate course.

26. In the present case, for the current year two seats have already been reserved as per the direction issued by this Court. If the applications of the petitioners would not have been illegally rejected by the respondent, there is no dispute that such candidates should have been selected during the year 2004-05. As the applications of the petitioners were illegally rejected, other

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students who secured less marks had been admitted. The fault was of the respondent and not that of the students.

27. The petitioners were vigilant enough and have been pursuing the writ petitions from the very inception and it cannot be said that the petitioners was guilty of any laches. The petitioners come within the Other Backward Category. Since the petitioners were not at all at fault and the default was on the part of the State Government in surrendering several seats, equity tilts in favour of the writ petitioners. It would be indeed a sad reflection on the judicial system if the petitioners are told "even though you have come to Court with all promptitude and had a right to be admitted during a particular year, the Court cannot come to your rescue because the Court could not decide the matter immediately and, therefore, your writ petitions have become infructuous".

28. The delay in deciding cases in courts has indeed assumed alarming proportions. Even though the courts themselves may or may not be held responsible for the inordinate delay in deciding cases in view of the exploding dockets, the litigants are not to be blamed in any manner if their cases cannot be taken up within a reasonable time and it would be indeed very ironical if the case of a deserving petitioner would be dismissed and no relief would be granted merely because it was impossible for the court to take up the case within a reasonable time. In this context, I feel, it is my obligation to quote the observation made by the Supreme Court in (1980) 2 SCC 593 (GUJARAT STEEL TUBES LTD. AND OTHERS v. GUJARAT STEEL TUBES MAZDOOR SABHA AND OTHERS), of course in a different context :-

> "164. This litigation, involving many workmen living precariously on poor wages amidst agonising inflation and a Management whose young budget, what with steel scarcity, may well be shaken by the burden of arrears, points to the chronic pathology of our Justice System — the intractable and escalating backlog in the Forensic Assembly Line that slowly spins Injustice out of Justice and effectually, wears down or keeps out the weaker sector of Indian life. This trauma is felt more poignantly in labour litigation and the legislature fails functionally if it dawdles to radicalise, streamline and simplify the conflict resolution procedures so as to be credibly available to the common people who make up the lower bracket of the nation. The stakes are large, the peril is grave, the evils are worse than the prognostics of Prof.Laurence Tribe (of the Harvard Law School);

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> If court backlogs grow at their present rate, our children may not be able to bring a lawsuit to a conclusion within their lifetime. Legal claims might then be willed on, generation to generation, like hillbilly feuds; and the burdens of pressing them would be contracted like a hereditary disease.
>
> 165. Law may be guilty of double injustice when it is too late and too costly for it holds out remedial hopes which peter out into sour dupes and bleeds the anaemic litigant of his little cash only to tantalise him into a system equal in form but unequal in fact."

29. What was said in the context of disputes involving Labour Law applies with equal, if not greater, vigour to legal disputes relating to admission in Education Institutions.

30. Having regard to all these peculiar facts, in the present case, I deem it fit and proper to give a direction that the present petitioners should be admitted during the relevant academic session as per the schedule approved and emphasised in Mridul Dhar's case. In normal course, the admission against Government quota is to take place before 31.8.2005. However, for sufficient reasons, such admission can take place on or before 30.9.2005.

31. Accordingly, the writ petitions are allowed and the State Government is directed to sponsor the candidature of the petitioners against the reserved seats kept vacant as per the order of this Court. This direction should be complied with within a period of one week from the date of receipt of a copy of the order. There would be no order as to costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Secretary,
The Government of Pondicherry,
Health Department,
Chief Secretariat, Pondicherry.

2.The Convenor, Centralised Admission Committee
(CENTAC),
Pondicherry Engineering College,
Pondicherry 605 014.

3. The Registrar,
Pondicherry University,
Kalapet, Pondicherry 605 014.

4. The Chairman,
Medical Council of India,
Opposite to Mata Sundari College
for Women, New Delhi 118 002.

5. The Public Prosecutor,
Pondicherry

2 ccs to Senior Government Pleader, Pondicherry SR. Nos. 39278, 39279

2 ccs to Mr.K.S. Ganesh Babu, Advocate, SR. 39201 , 39200

WP.Nos.23862 &
23863/2004

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